



## Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258

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### DRAFT MINUTES FOR REGULAR SESSION MEETING

Held on Wednesday, December 14, 2011  
9535 E. Doubletree Ranch Road • Scottsdale, Arizona

#### **Board Members**

Douglas D. Lee, M.D., Chair  
Amy J. Schneider, M.D., F.A.C.O.G., Secretary  
James M. Gillard, M.S., M.D., F.A.C.E.P., F.A.A.E.M.  
Andrea E. Ibáñez  
Jody L. Jenkins, M.D.  
Gordi S. Khera, M.D.  
Ram R. Krishna, M.D.  
Harold Magalnick, M.D.  
Germaine Proulx  
William J. Thrift, M.D.

#### **CALL TO ORDER**

Dr. Lee called the meeting to order at 8:00 a.m.

#### **ROLL CALL**

The following Board members were present: Dr. Gillard, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift. The following Board members were absent: Drs. Jenkins and Khera.

#### **CALL TO THE PUBLIC**

SB spoke during the call to the public regarding cases that were previously adjudicated. All other individuals that addressed the Board during the call to the public appear beneath the case(s) referenced.

#### **EXECUTIVE DIRECTOR'S REPORT**

Lisa Wynn, Executive Director, thanked Dr. Krishna for hosting the Holiday Party. Ms. Wynn reported that on October 31, 2011, she appeared before the Governor's Committee of Reference to answer questions regarding the Performance Audit and Sunset Review. Ms. Wynn stated that the Board was granted a 10 year extension that will appear in new legislation proposed by Senator Nancy Barto, to extend the life of the Board until July 1, 2022. Dr. Krishna noted that this is the second time the Board has been granted a ten year extension, which he stated is commendable for the Board and its staff. Ms. Wynn announced that Paul Parker has accepted the position of Licensing Manager. Ms. Wynn reported that efficiencies were put in place in the Licensing Office that will provide the opportunity to process routine licenses much quicker. She stated that in September 2011, 31 licenses were granted with an average of 41 days to process the application. Ms. Wynn stated that in October 2011, 208 licenses were granted with an average of 30 days of processing with the help of other departments including Support Services, Board Operations, and the Executive Assistant. Ms. Wynn informed the Board that the Agency continues to partner with other states through the Federation of State Medical Boards (FSMB) regarding the uniform license applications in an effort to streamline the process for physicians. Ms. Wynn explained that a one-time \$50 fee will be required for the uniform application and that the applicant will have the ability to apply to numerous states. Dr. Krishna stated that the FSMB has recognized the Board and the reduced timeframes for processing of initial licenses. He stated that 40 days to process a license application is unheard of, and commended Board staff for their hard work.

Ms. Wynn reported that she had the opportunity to meet with the Governor's Health Care Policy Advisor and the Executive Director of the Pharmacy Board to discuss prescription drug overdoses. Ms. Wynn reported that recent data shows an alarming rate in which accidental prescription drug overdoses have increased nationwide. She stated that the Governor's Office is looking at ways to educate teens and parents to create safeguards. Ms. Wynn stated that she plans to partner with other state agencies to provide licensees with tools they need including access to the Controlled Substance Prescription Monitoring Program (CSPMP). Ms. Wynn stated that it is the Board's goal to increase the number of physicians who are utilizing the program's database by paying for training program fee. Ms. Wynn stated that because the Agency has been so fiscally responsible, the Board has the ability to comfortably absorb the investment of \$60,000 to support the expansion of the number of physicians using the program. Ms. Wynn stated that a link will be available on the Board's website, and that information will also be disseminated with license renewals. Dr. Thrift commented that he believes the program is very valuable. Dr. Gillard mentioned that he has been using the

program for two years and that he finds it to be a very valuable tool in the urgent care setting. Ms. Wynn informed the Board that the Arizona Regulatory Board of Physician Assistants (ARBoPA) has been working to update the PA Rules. She stated that the draft rules have been posted to both Boards' websites, and that the draft has also been disseminated to stakeholders in order to obtain public comments on the proposed changes. Ms. Wynn stated that the formal comment period will be scheduled at a later date, and that she expects the rule changes to be adopted by December of 2012. Ms. Wynn reminded the Board that the FSMB will hold its Annual Meeting in April in Texas, and that Board Members interested in attending should contact Ms. Wynn.

#### **CHAIR'S REPORT**

Dr. Lee welcomed Dr. Gillard to the Board. Dr. Lee stated that Ms. Wynn and her staff did an excellent job during the Sunset Review process, and that he was very impressed with her performance before the Governor's Committee of Reference. Dr. Lee noted that the Offsite Meeting is scheduled for February 2012 and instructed Board members to submit proposed discussion items to Ms. Wynn. Dr. Krishna recommended discussing the issue regarding a physician's obligation to see a patient without payment at the Offsite Meeting. Dr. Lee also noted that the Board's annual election is scheduled for February 2012 as well, and requested Board members who are interested in an elected position to inform Ms. Wynn. Dr. Lee stated that he is hopeful that the Governor's Office will have the two remaining Board Member positions filled by that time.

#### **LEGAL ADVISOR'S REPORT**

Jennifer Boucek, Assistant Attorney General, reported that her office is currently short staffed, and that Anne Froedge, Assistant Attorney General, has been doing a great job with the Formal Hearing cases. She stated that the current caseload is under control, and that the Board recently received help from outside counsel for one case that was referred to Formal Hearing.

#### **BOARD MEMBER RECOGNITION**

Dr. Lee presented Dr. Paul Petelin with a plaque in recognition of his time served on the Board. Dr. Lee pointed out that Dr. Petelin had served on the Board for six years and stated that he has been an excellent member of the Board. Dr. Petelin stated that it was a privilege and honor to have served on the Board.

#### **EVALUATION AND CONSIDERATION OF COMPENSATION INCREASE FOR EXECUTIVE DIRECTOR**

**MOTION: Dr. Schneider moved to enter into Executive Session to discuss this confidential personnel matter.**

**SECOND: Dr. Krishna**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

The Board entered into Executive Session at 11:49 a.m.

The Board returned to Open Session at 12:04 p.m.

No deliberations were made during Executive Session.

Dr. Krishna recognized that a lot of positive changes have occurred at the Board since Ms. Wynn became the Executive Director. He expressed his appreciation for her proactive work with other agencies, and noted that the outside legal community has been very happy with the Board's accessibility. Dr. Krishna stated that Ms. Wynn has been a great asset to the Board, and he spoke in favor of approving the Executive Director's compensation increase as requested.

**MOTION: Dr. Krishna moved to approve the compensation increase for the Executive Director as requested.**

**SECOND: Ms. Ibáñez**

Dr. Lee stated that he appreciated Ms. Wynn taking the lead on the Board's proactive stance, and questioned whether the State has any processes regarding a Masters or other educational programs for Executive Directors. Dr. Lee stated that he recalled Ms. Wynn's great comments regarding her participation in the Harvard Executive Managers Program, and questioned whether there were other programs available to help advance in her profession. Ms. Wynn stated that she would research it, and informed the Board that supervisory training is available through the State along with CLEAR training for staff. Ms. Wynn stated that the State also offers tuition reimbursement.

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

#### **APPROVAL OF MINUTES**

**MOTION: Ms. Proulx moved to approve the October 5, 2011 Regular Session Meeting, including Executive Session, and the October 5, 2011 Emergency Summary Action Meeting, including Executive Session.**

**SECOND: Dr. Krishna**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

#### **ADVISORY LETTERS**

**MOTION: Dr. Krishna moved to issue an Advisory Letter in item numbers 2, 4-9, 11, 14, 16, 18, 20-27.**

**SECOND: Ms. Proulx**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-11-0723A	ROBIN M. FLECK, M.D.	31062	Issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline.

Dr. Thrift stated that he knows Dr. Fleck, but that it would not affect his ability to adjudicate the case. Dr. Thrift found that the patient was adequately consented regarding cryotherapy and the associated risk of hyperpigmentation prior to her therapy with Dr. Fleck. Dr. Thrift noted that the MC criticized Dr. Fleck's documentation of the size of biopsies and excisions in the medical record. He recognized that Dr. Fleck has indicated that she changed her process to include the sizes in her medical record documentation. Dr. Schneider questioned whether it is the standard of care to document the biopsy margins and sizes. Daniel Caruso, M.D., Medical Consultant, stated that it is both the standard of care and best practice to document location and size. Dr. Schneider spoke in favor of an Advisory Letter.

**MOTION: Dr. Schneider moved to issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline.**

**SECOND: Dr. Krishna**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-11-0115A	CHARLES M. T. JOST, M.D.	28064	Issue an Advisory Letter for performing unnecessary angiography procedures in a patient with stage 3 renal failure and for inadequate medical records. This matter does not rise to the level of discipline.
3.	MD-11-0022A	EDWARD J. SAYEGH, M.D.	40787	Issue an Advisory Letter for continuing to prescribe opioids without obtaining prior medical records for a patient undergoing methadone treatment and for inadequate medical records. This matter does not rise to the level of discipline.

Dr. Thrift observed that Dr. Sayegh continued to prescribe narcotics to a patient who was also receiving treatment at a methadone clinic. Dr. Thrift noted that Dr. Sayegh attempted to coordinate care with the methadone clinic and that Dr. Sayegh provided the Board with a copy of the letter he submitted to the methadone clinic requesting information regarding the patient's treatment.

**MOTION: Dr. Thrift moved for dismissal.**

**SECOND: Dr. Gillard**

Dr. Krishna spoke against the motion and noted that on one occasion, Dr. Sayegh wrote a prescription for the patient that was not documented in the chart. Dr. Krishna opined that narcotics cannot be prescribed to patients without proper documentation. Dr. Schneider also spoke against the motion and observed that Dr. Sayegh continued to prescribe narcotics to the patient without obtaining the patient's prior medical records.

**VOTE: 1-yay, 7-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION FAILED.**

**MOTION: Dr. Krishna moved to issue an Advisory Letter for continuing to prescribe opioids without obtaining prior medical records for a patient undergoing methadone treatment and for inadequate medical records. This matter does not rise to the level of discipline.**

**SECOND: Ms. Proulx**

Dr. Krishna spoke in favor of the motion and noted that Dr. Sayegh has obtained CME in prescribing since this incident occurred.

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
4.	MD-11-0663A	SANJAY R. PATEL, M.D.	40721	Issue an Advisory Letter for allowing a physician licensed in another state to perform healthcare tasks prior to receiving an Arizona medical license. The violation was a minor technical violation that does not rise to the level of discipline.
5.	MD-11-0655A	CLYDE C. MENDONCA, M.D.	40391	Issue an Advisory Letter for improper prescribing of anti-hypertensive medication. This matter does not rise to the level of discipline.

Attorney Andy Plattner spoke during the call to the public on behalf of Dr. Mendonca.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
6.	MD-11-0771A	MELINDA M. MARTIN, M.D.	21893	Issue an Advisory Letter for instillation of the incorrect chemical into the bladder and for inadequate medical records. This matter does not rise to the level of discipline.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
7.	MD-11-0761A	CARL W. DASSE, M.D.	7963	Issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline.
8.	MD-11-0683A	DON L. BURGIO, M.D.	36738	Issue an Advisory Letter for performance of surgery with inappropriate indications. This matter does not rise to the level of discipline.
9.	MD-11-0866A	LAURIE A. FARRICIELLI, M.D.	21865	Issue an Advisory Letter for inadequate oversight of the use of a GJ tube and for inadequate medical records. This matter does not rise to the level of discipline.

Complainant GWM spoke during the call to the public.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
10.	MD-11-0727A	KAREN B. BARCKLAY-DODSON, M.D.	29446	Dismiss.

Dr. Schneider noted that this case occurred within the prison system, and stated that she recognized that it is difficult for physicians to treat patients in the prison system. Kathleen Coffey, M.D., Medical Consultant, noted that there are strict protocols in place within the prison system that are not the same as the private sector. Dr. Coffey pointed out that Dr. Barcklay-Dodson stated in her response to the Board that it was not her decision not to prescribe the patient his headache medication.

**MOTION: Dr. Schneider moved for dismissal.**

**SECOND: Dr. Krishna**

Dr. Thrift questioned whether the medication would have been dispensed at the prison if Dr. Barcklay-Dodson had prescribed it in lieu of the decision that came down to not prescribe it. Dr. Coffey stated that the medical consultant had commented that Dr. Barcklay-Dodson should have proceeded to advocate for the patient and push the issue further. Dr. Coffey stated that the patient submitted health needs requests for the medication and that Dr. Barcklay-Dodson responded to the patient stating that the decision had been made and she was not able to prescribe the medication.

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
11.	MD-11-0257A	KIUP A. KIM, M.D.	42708	Issue an Advisory Letter for prescribing scheduled medications with inadequate evaluation and monitoring, and for inadequate medical records. This matter does not rise to the level of discipline.
12.	MD-11-0206A	CHRISTOPHER S. LICHTENWALTER, M.D.	43102	Dismiss.

Dr. Lichtenwalter and Attorney Steve Myers spoke during the call to the public. Dr. Krishna found that Dr. Lichtenwalter recognized the complication, consulted with a vascular surgeon telephonically, and that his medical record documentation was thorough.

**MOTION: Dr. Krishna moved for dismissal.**

**SECOND: Ms. Ibáñez**

Dr. Thrift spoke in favor of dismissal and stated that the physician's call to the public statement clarified his questions regarding the consultation and how he responded to the complication.

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
13.	This matter was pulled from the agenda.			
14.	MD-11-0626A	HIMANSHU H. SHUKLA, M.D.	33766	Issue an Advisory Letter for implantation of a BIV ICD in a patient who did not meet the guidelines for BIV ICD placement. This matter does not rise to the level of discipline.
15.	MD-11-0842A	MICHAEL S. WENG, M.D.	18604	Dismiss.

Dr. Weng spoke during the call to the public. Angelo Mattalino, M.D., Medical Consultant, summarized that the emergency room physician called Dr. Weng regarding the patient, and that Dr. Weng instructed the patient to present to his office for follow up. According to the patient, he called Dr. Weng's office and was denied an appointment due to lack of insurance and payment. Dr. Krishna questioned whether Dr. Weng was liable for the patient and noted that there is no documentation of the phone call to Dr. Weng's office. Dr. Schneider questioned whether it is the physician's responsibility to follow up with a patient in his office when the patient is not able to pay. Dr. Magalnick stated when it is a mandatory call, the patient has to be seen at least once in the office.

**MOTION: Dr. Krishna moved for dismissal.**

**SECOND: Dr. Thrift**

Dr. Schneider requested that the Board discuss the issue at a later date. Dr. Krishna stated that if a physician is paid for taking call, they are required to see the patient. He stated that otherwise, the physician is not obligated to see the patient unless it is urgent or a life-threatening emergency. Dr. Thrift pointed out that the phone call may not have gone beyond a discussion of insurance and payment. Dr. Thrift stated that the office staff may not have known that it was the patient from the emergency room.

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
16.	MD-10-0585A	JOHN P. BADALAMENTI, M.D.	30744	Issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline.
17.	MD-11-0801A	MIRNA DEMIRDJIAN, M.D.	42234	Issue an Advisory Letter for failure to report test results in a timely fashion. This matter does not rise to the level of discipline.

Dr. Demirdjian spoke during the call to the public. Ms. Ibáñez observed that the patient presented to Dr. Demirdjian's office for a scheduled appointment to discuss her ultrasound results, but left without being seen. Ms. Ibáñez questioned whether the standard of care permitted Dr. Demirdjian to mail the patient her results, or to provide them over the phone. Dr. Haas stated that it is acceptable to mail the patient results with the patient's permission, and that it is also acceptable to provide the results telephonically.

**MOTION: Ms. Ibáñez moved to issue an Advisory Letter for failure to report test results in a timely fashion. This matter does not rise to the level of discipline.**

**SECOND: Dr. Krishna**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
18.	MD-11-0054A	TIMOTHY A. LUKE, M.D.	41183	Issue an Advisory Letter for inadequate medical records. This matter does not rise to the level of discipline.

Complainant CFM spoke during the call to the public.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
19.	MD-11-0729A	TERRY A. REEVES, M.D.	18664	Issue an Advisory Letter for inadequate interpretation of a chest x-ray. This matter does not rise to the level of discipline.

Dr. Thrift recognized that Dr. Reeves conceded in his response to the case that he did not call the ordering physician regarding the widened mediastinum on the patient's x-ray. Dr. Reeves pointed out in his response that the hospitalist had documented observation of an increase appearance in the mediastinum. William Wolf, M.D., Chief Medical Consultant, stated that the medical consultant's concerns regarded Dr. Reeves' failure to note the presence of the widened mediastinum on the initial x-ray. Dr. Wolf informed the Board that Dr. Reeves read another x-ray over five hours later and reported the widened mediastinum, but that there was nothing done by the patient's providers for an additional four days. Dr. Wolf stated Board staff had found that Dr. Reeves' failure to call the widened mediastinum on the initial x-ray did not influence the outcome of the case. Dr. Krishna commented that a radiologist is obligated to report abnormal findings such as this, and pointed out that emergency room physicians rely heavily on the radiologist's findings. Dr. Krishna spoke in favor of an Advisory Letter.

**MOTION: Dr. Krishna moved to issue an Advisory Letter for inadequate interpretation of a chest x-ray. This matter does not rise to the level of discipline.**

**SECOND: Dr. Thrift**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
20.	MD-11-0955A	PATRICK L. FLYTE, M.D.	31870	Issue an Advisory Letter for failing to recognize and address an abnormal potassium level. This matter does not rise to the level of discipline.
21.	MD-11-0724A	TERRY A. HUFF, M.D.	20570	Issue an Advisory Letter for failure to further evaluate possible vaginal cuff dehiscence. This matter does not rise to the level of discipline.
22.	MD-11-0470A	SUDHANSHU K. JAIN, M.D.	40825	Issue an Advisory Letter for failure to order follow up imaging in a patient with abdominal films suggesting cecal obstruction. This matter does not rise to the level of discipline.
23.	MD-11-1105A	WARREN D. KUIPERS, M.D.	23525	Issue an Advisory Letter for failing to discharge a patient in a proper manner and for failing to refill a patient's anti-hypertension medication. This matter does not rise to the level of discipline.
24.	MD-11-0941A	RONALD C. PETCHER, M.D.	31540	Issue an Advisory Letter for failure to describe spinal cord signal intensity in MRI C-spine readings. This matter does not rise to the level of discipline.
25.	MD-11-0711A	STEVEN STEINBERG, M.D.	20302	Issue an Advisory Letter for failure to remove a ureteral stent. This matter does not rise to the level of discipline.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
26.	MD-11-0499A	GINO TUTERA, M.D.	28759	Issue an Advisory Letter for inadequate oversight of an employee provider and for continuing to treat a patient with testosterone supplementation in a patient with hirsutism and elevated testosterone levels. This matter does not rise to the level of discipline.

Attorney Christine Cassetta spoke during the call to the public on behalf of Dr. Tuter.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
27.	MD-11-1133A	RICHARD H. ZESCHKE, M.D.	10882	Issue an Advisory Letter for inadequate documentation of office consultations, therapeutic plans, and telephone conversations. This matter does not rise to the level of discipline.

## REVIEW OF EXECUTIVE DIRECTOR (ED) DISMISSALS

**MOTION:** Dr. Krishna moved to uphold the dismissal in item numbers 1-13.

**SECOND:** Dr. Schneider

**VOTE:** 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-11-0698A	CHAMAN L. LUTHRA, M.D.	10655	Uphold the dismissal.
2.	MD-11-0974A	GABRIEL M. GAORIYE, M.D.	37313	Uphold the dismissal.
3.	MD-11-1114A	STEPHEN T. SMITH, M.D.	42604	Uphold the dismissal.
4.	MD-11-0688A	MATTHEW P. BARCELLONA, M.D.	37168	Uphold the dismissal.

Dr. Barcellona spoke during the call to the public.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
5.	MD-11-0899A	CULLEY K. CHRISTENSEN, M.D.	8464	Uphold the dismissal.
6.	MD-11-0607A	RAMA J. DEVINENI, M.D.	29426	Uphold the dismissal.
7.	MD-11-0940A	ERIC B. FARBER, M.D.	27406	Uphold the dismissal.

Attorney Shane Armstrong spoke during the call to the public on behalf of Dr. Farber.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
8.	MD-11-0947A	GLENN M. LIPTON, M.D.	32683	Uphold the dismissal.

Attorney Jim Ledbetter spoke during the call to the public on behalf of Dr. Lipton.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
9.	MD-11-0760A	JAMES B. BENJAMIN, M.D.	12347	Uphold the dismissal.

Dr. Lee stated that he knows Dr. Benjamin, but that it would not affect his ability to adjudicate the case.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
10.	MD-11-0305A	RICHARD A. MANCH, M.D.	7079	Uphold the dismissal.
11.	MD-11-0305B	GEETHA KOLLI, M.D.	37442	Uphold the dismissal.

Complainant SF spoke during the call to the public regarding Review of ED Dismissals item numbers 10 and 11.

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
12.	MD-11-1064A	JOSE L. ROBLEDO, M.D.	13386	Uphold the dismissal.
13.	MD-11-1048A	RUBEY R. WORRELL, M.D.	37095	Uphold the dismissal.

## OTHER BUSINESS

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-11-0339A	GEORGE S. SARA, M.D.	15912	Accept the proposed Consent Agreement for a Practice Restriction. Dr. Sara shall not practice interventional or pharmacologic pain management for a period of fifteen years. Dr. Sara may perform the following procedures for operative patients only: administration of general anesthesia, interscalene injections for shoulder surgeries, femoral nerve injections for anterior cruciate ligament or total knee surgeries, peribulbar injections for ocular cataract surgeries, axillary brachial plexus injection for arm surgeries, lumbar subarachnoid injections for lower body surgeries where a contraindication for general anesthesia exists, or ankle blocks or field injections for foot surgeries.

Dr. Lee stated that he knows Dr. Sara, but that it would not affect his ability to adjudicate the case.

**MOTION:** Dr. Krishna moved to accept the proposed Consent Agreement for a Practice Restriction. Dr. Sara shall not practice interventional or pharmacologic pain management for a period of fifteen years. Dr. Sara may perform the following procedures for operative patients only: administration of general anesthesia, interscalene injections for shoulder surgeries, femoral nerve injections for anterior cruciate ligament or total knee surgeries, peribulbar injections for ocular cataract surgeries, axillary brachial plexus injection for arm surgeries, lumbar subarachnoid injections for lower body surgeries where a contraindication for general anesthesia exists, or ankle blocks or field injections for foot surgeries.

**SECOND:** Dr. Thrift

Dr. Lee observed that the Consent Agreement stipulates that Dr. Sara would be permitted to perform lumbar subarachnoid injections for lower body surgeries where a contraindication for general anesthesia exists. Dr. Lee questioned whether Dr. Sara would need to refer patients to another anesthesiologist for cases in which a contraindication for general anesthesia does not exist.

**MOTION:** Ms. Ibáñez moved for Executive Session to receive legal advice.

**SECOND:** Dr. Krishna

**VOTE:** 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

**MOTION PASSED.**

The Board entered into Executive Session at 9:32 a.m.

The Board returned to Open Session at 9:36 a.m.

No deliberations or discussions were made during Executive Session.

**ROLL CALL VOTE:** Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift. The following Board members were absent: Drs. Jenkins and Khera.

**VOTE:** 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-11-0944A	HAROLD K. FIGUEROA, M.D.	28045	Dismiss.

Dr. Coffey summarized that this case was reviewed by a medical consultant who found that Dr. Figueroa had little to no documentation of a discussion with the patient regarding the risks and benefits of Paxil. Dr. Coffey stated that Board staff determined that the recordkeeping issues were minor and noted that Dr. Figueroa has indicated that he made changes in his documentation process.

**MOTION:** Dr. Schneider moved for dismissal.

**SECOND:** Dr. Gillard

**VOTE:** 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	MD-11-0325A	ADOLBEN Y. MONTESCLAROS, M.D.	17681	Approve the draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand.

**MOTION:** Dr. Krishna moved to approve the draft Findings of Fact, Conclusions of Law and Order for a Letter of Reprimand.

**SECOND:** Dr. Schneider

Dr. Gillard noted that Dr. Montesclaros had undergone formal general surgery training. Dr. Krishna observed that Dr. Montesclaros did not have privileges at the hospital and stated that he should have consulted a surgeon. Dr. Lee stated that the Board's concerns were addressed during the formal interview process. Dr. Gillard confirmed that he reviewed the transcript of the formal interview.

**VOTE:** 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

**MOTION PASSED.**

#### LEGAL MATTERS

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-11-0471A	TIN T. WIN, M.D.	28212	Rescind the referral to Formal Hearing; accept the Findings of Fact and Conclusions of Law in the proposed Consent Agreement; and modify the Order in the proposed Consent Agreement for a Decree of Censure and Practice Restriction by allowing Dr. Win to petition the Board for termination of the Practice Restriction after four years. If the physician agrees with the new terms, the Order shall become effective and this matter will not need to come before the Board for approval.

Dr. Win was not present during the Board's consideration of this case. Anne Froedge, Assistant Attorney General, summarized that the patient in this case suffered toxicity and withdrawal symptoms due to Dr. Win's prescribing of controlled substances. Ms. Froedge informed the Board that the current case occurred after Dr. Win was previously disciplined by the Board for similar prescribing issues and completed PACE.

**MOTION: Dr. Krishna moved to rescind the referral to Formal Hearing and accept the proposed Findings of Fact and Conclusions of Law in the proposed Consent Agreement.**

**SECOND: Ms. Ibáñez**

Dr. Krishna stated that he agreed with the Findings of Fact and Conclusions of Law in the proposed Consent Agreement, but suggested voting on the Order separately.

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

Dr. Krishna stated that he agreed with the proposed Decree of Censure and the Practice Restriction; however, he questioned whether it was appropriate for Dr. Win to return to the Board in two years to request termination of the Practice Restriction. Dr. Krishna stated that he believed two years is too soon, and recommended modifying the Order to indicate that Dr. Win may petition the Board after four years to request termination of the Practice Restriction. Dr. Lee agreed with Dr. Krishna's comments and questioned whether extending it to five years would be appropriate. Dr. Krishna pointed out that after five years, the Order would terminate by operation of law. Dr. Magalnick noted that the two year language provides that the Board may re-review the matter in two years to determine whether Dr. Win has been in compliance with the Practice Restriction. He stated that if the Order were to terminate by operation of law, the Board will not have the opportunity to revisit the issue.

**MOTION: Dr. Krishna moved to modify the Order in the proposed Consent Agreement for a Decree of Censure and Practice Restriction by allowing Dr. Win to petition the Board for termination of the Practice Restriction after four years. If the physician agrees to the new terms, the Order shall become effective and this matter will not need to come before the Board for approval.**

**SECOND: Ms. Ibáñez**

Christopher Munns, Assistant Attorney General, Solicitor General's Office, informed the Board that if Dr. Win declines the modified Consent Agreement, the matter will proceed to Formal Hearing. He pointed out that the ALJ may not consider the settlement discussions, but that the Board's counsel may raise the issue at the Hearing if necessary.

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift. The following Board members were absent: Drs. Jenkins and Khera.**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

#### **FORMAL HEARING MATTERS – CONSIDERATION OF ADMINISTRATIVE LAW JUDGE (ALJ) RECOMMENDED DECISION**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
1.	MD-10-0988A MD-10-1392A MD-11-0006A	ARTHUR J. O'CONNOR, M.D.	6361	Adopt the ALJ's recommended Findings of Fact, Conclusions of Law and Order for License Revocation and assessment of Formal Hearing costs. Dr. O'Connor shall pay the hearing costs no later than thirty days from the date of invoice.

JNPP and RBP spoke during the call to the public. Dr. O'Connor was present with legal counsel, Mr. Daniel Jantsch. Dr. Krishna stated that he knows Mr. Jantsch, but that it would not affect his ability to adjudicate the case. Michael Sillyman, Outside Counsel, summarized that the ALJ concluded that Dr. O'Connor inappropriately touched two patients whose testimony was found to be credible. Mr. Sillyman reported that the ALJ found one patient to not be credible, and therefore, did not sustain her allegations against the physician. Mr. Sillyman stated that the ALJ also found that Dr. O'Connor falsely informed Board staff that only three complaints had been made against him through 2010 when two complaints had been made in 2003 and 2005.

Mr. Jantsch stated that the first two complaints made were reviewed by the hospital in which Dr. O'Connor was exonerated through the peer review process. He stated that the two subsequent investigations by the Board concluded that there was insufficient evidence to support the allegations made against the physician, and that the County Attorney also determined that prosecution was not appropriate. Mr. Jantsch further stated that the last complaint made involved the patient with whom the ALJ found to not be credible. Mr. Jantsch commented that the ALJ failed to recognize that every agency that investigated these matters decided each time in Dr. O'Connor's favor. He stated that if the ALJ overlooked appropriate evidence, it is the Board's responsibility to make sure that the physician has due process of law.

Dr. O'Connor addressed the Board and stated that he believed the allegations are baseless, and that he does not believe he has been given a fair hearing. Mr. Sillyman asked that the Board rely on the record established at the Formal Hearing, and that the Board adopt the ALJ's recommendation.



**MOTION: Dr. Krishna moved to enter into Executive Session to receive legal advice.**

**SECOND: Dr. Thrift**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

The Board entered into Executive Session at 10:25 a.m.

The Board returned to Open Session at 10:32 a.m.

No deliberations or discussions were made during Executive Session.

**MOTION: Dr. Schneider moved to adopt the ALJ's recommended Findings of Fact, Conclusions of Law and Order for License Revocation and assessment of Formal Hearing costs. Dr. O'Connor shall pay the hearing costs no later than thirty days from the date of invoice.**

**SECOND: Ms. Ibáñez**

Dr. Schneider stated that after hearing from the physician, she considered modifying the ALJ's recommended Order to allow him to practice with a restriction from seeing any patients. However, she stated that she supports revoking the license based on the several allegations and the lengthy Formal Hearing.

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift. The following Board members were absent: Drs. Jenkins and Khera.**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

Mr. Munns instructed the Board to vote on the proposed Order arising from the ALJ's recommended decision as their previous motion adopted the ALJ's recommendation only.

**MOTION: Dr. Schneider moved to approve the Board Order arising from the ALJ's recommended decision.**

**SECOND: Ms. Ibáñez**

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift. The following Board members were absent: Drs. Jenkins and Khera.**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
2.	MD-10-1411A	ANGELO L. CHIRBAN, M.D.	27055	Adopt the ALJ's recommended Findings of Fact, Conclusions of Law and Order, and the proposed Board Order for License Revocation and assessment of Formal Hearing costs. Dr. Chirban shall pay the hearing costs not later than sixty days from the date of invoice.

Dr. Chirban was not present during the board's consideration of this case. Board members indicated that they received and reviewed the administrative record of the Formal Hearing in this matter. Anne Froedge, Assistant Attorney General, summarized that this case stemmed from a complaint alleging that a patient's death was a result of Dr. Chirban's inappropriate prescribing. Ms. Froedge informed the Board that Dr. Chirban did not respond to Board staff's investigation notifications and did not appear at the Hearing. Ms. Froedge stated that Dr. Chirban's prior Board history is extensive and involved issues related to prescribing and recordkeeping. She requested that the Board adopt the ALJ's recommendation in its entirety and approve the Board Order arising from the ALJ's recommended decision.

**MOTION: Dr. Krishna moved to adopt the ALJ's recommended Findings of Fact, Conclusions of Law and Order, and the proposed Board Order for License Revocation and assessment of Formal Hearing costs. Dr. Chirban shall pay the hearing costs no later than sixty days from the date of invoice.**

**SECOND: Dr. Magalnick**

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift. The following Board members were absent: Drs. Jenkins and Khera.**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC. #	RESOLUTION
3.	This matter was pulled from the agenda.			

## **FORMAL INTERVIEWS**

NO.	CASE NO.	PHYSICIAN	LIC.#	RESOLUTION
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NO.	CASE NO.	PHYSICIAN	LIC.#	RESOLUTION
1.	MD-11-0168A	JOSEPH A. LONGO, M.D.	18636	Dismiss.

Dr. Longo was present with legal counsel, Mr. Gordon Clevenger. Angelo Mattalino, M.D., Medical Consultant, summarized that the medical consultant found that Dr. Longo failed to achieve appropriate liner impaction for stability and position during patient PH's total hip replacement surgery. Dr. Longo explained to the Board that when he initially reviewed the postoperative images, the placement of the liner looked normal. He stated that in retrospect, there is a very subtle finding of minimal malposition. Dr. Longo stated that when he did note the shift in the liner, he discussed it with PH and offered to perform revision surgery. Dr. Schneider observed that Dr. Longo documented that he reviewed the patient's x-rays, but noted that he failed to mention the details of his discussion with PH. Dr. Longo was questioned as to how he would respond if he were faced with a similar situation. He stated that he believed his actions were appropriate in this case, and that he would not do anything differently. In closing, Mr. Clevenger pointed out that the radiologist had reported at the end of the procedure that the component was properly placed. He stated that he believed that Dr. Longo met the standard of care in this case with respect to the procedure itself. Dr. Krishna stated that based on his review of the progress notes, he found that the possibility of a revision was charted as well as the liner movement. Dr. Krishna spoke in favor of dismissing the case.

**MOTION: Dr. Krishna moved for dismissal.**

**SECOND: Dr. Gillard**

Dr. Gillard spoke in favor of the motion and noted that the radiologist reported proper alignment at the time of surgery, and that Dr. Longo later charted the possible slippage. Dr. Krishna observed that the liner issue has been a common finding regarding the metal-on-metal equipment. Dr. Thrift stated that he found Dr. Longo addressed PH's complaints appropriately.

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift. The following Board members were absent: Drs. Jenkins and Khera.**

**VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.**

**MOTION PASSED.**

NO.	CASE NO.	PHYSICIAN	LIC.#	RESOLUTION
2.	MD-10-1515A	JAMES E. MACIULLA, M.D.	18726	Return the case for re-notice of a violation of A.R.S. §32-1401(27)(e) for medical records, and return the case to the Board with the recommendation for an Advisory Letter.

Dr. Schneider was recused from this case. Dr. Maciulla was present with legal counsel, Mr. Chris Smith. Ingrid Haas, M.D., Medical Consultant, summarized that Dr. Maciulla failed to evaluate patient MO upon admission, and failed to monitor the course of her care. Dr. Maciulla provided the Board with a brief summary of his involvement in this case. He stated that he was contacted by the emergency room physician, and accepted the transfer of MO for delivery of her twins. He told the Board that he believes that the patient's epidural was placed well, but that it was dosed too high and too fast. Dr. Thrift questioned Dr. Maciulla as to whether he had the patient's emergency room records when she arrived. Dr. Maciulla stated that he did not have the records. Dr. Lee stated that he found that the medical records do not reflect Dr. Maciulla's communication with his staff. Dr. Maciulla agreed that his recordkeeping could have been better. Dr. Maciulla explained that this was a very sick patient, and that he was not contacted when her pressure dropped. He stated that he believed MO was being monitored and cared for very well by his resident staff. In closing, Mr. Smith asked that the Board consider all the evidence and determine that this case does not rise to the level of unprofessional conduct. Dr. Thrift found that Dr. Maciulla's behavior was appropriate in this case, and that he believed Dr. Maciulla supervised his residents appropriately. Dr. Thrift stated that the primary concern in this case is documentation and that he did not find that this matter rises to the level of discipline.

**MOTION: Dr. Gillard moved for dismissal.**

**SECOND: Dr. Thrift**

Dr. Lee clarified that the intention of the motion is to dismiss the quality of care violation only. Ms. Boucek informed the Board that Dr. Maciulla was not noticed on a violation of A.R.S. §32-1401(27)(e) for medical recordkeeping. She advised the Board to return the matter for Board staff to notice the physician accordingly. Dr. Lee spoke against the motion, and agreed with returning the case for re-notice of a medical records violation. Dr. Gillard commented that the Board clearly addressed the shortcomings in Dr. Maciulla's recordkeeping during the interview. Dr. Magalnick opined that much greater scrutiny was warranted based on MO's presentation, though he agreed it may have been due to the medical recordkeeping issues.

**ROLL CALL VOTE: Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Dr. Magalnick, and Dr. Thrift. The following Board members voted against the motion: Ms. Ibáñez, Dr. Krishna, Dr. Lee, and Ms. Proulx. The following Board member was recused: Dr. Schneider. The following Board members were absent: Drs. Jenkins and Khera.**

**VOTE: 3-yay, 4-nay, 0-abstain, 1-recuse, 2-absent.**

**MOTION FAILED.**

**MOTION:** Dr. Krishna moved to return the case for re-notice of a violation of A.R.S. §32-1401(27)(e) for medical records, and return the case to the Board with the recommendation for an Advisory Letter.

**SECOND:** Ms. Proulx

Dr. Krishna spoke in favor of the motion and stated that an Advisory Letter is appropriate to track the occurrence.

**ROLL CALL VOTE:** Roll call vote was taken and the following Board members voted in favor of the motion: Dr. Gillard, Ms. Ibáñez, Dr. Krishna, Dr. Lee, Dr. Magalnick, Ms. Proulx, Dr. Schneider, and Dr. Thrift. The following Board members were absent: Drs. Jenkins and Khera.

**VOTE:** 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

**MOTION PASSED.**

The meeting adjourned at 2:32 p.m.



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Lisa S. Wynn, Executive Director